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OFFICE OF PETITIONS

In re Application of :
Masato Tanaka et al :
Application No. 10/500,560 : DECISION ON PETITION
Filed: June 30, 2004 :
Attorney Docket No. SAE-0027 :
:

This is a decision on the petition under 37 CFR 1.137(b), filed June 7, 2007, to revive the above-identified application.

The petition is **GRANTED**.

The two-month period for filing an appeal brief under 37 CFR 41.37 (accompanied by the fee required by 37 CFR 41.20(b)(2)), runs from the date of this decision.

The application became abandoned for failure to timely reply within the meaning of 37 CFR 1.113 to the final Office action mailed November 7, 2006, which set a shortened statutory period for reply of three (3) months. A one (1) month extension of time was obtained under the provisions of 37 CFR 1.136(a). Accordingly, the application became abandoned on March 8, 2007.

The proposed reply required for consideration of a petition to revive must be a Notice of Appeal (and appeal fee required by 37 CFR 41.20(b)(2)), an amendment that *prima facie* places the application in condition for allowance, a Request for Continued Examination (RCE) and submission (37 CFR 1.114), or the filing of a continuing application under 37 CFR 1.53(b). See MPEP 711.03(c)(III)(A)(2).

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a Notice of Appeal, (2) the petition fee of \$1,500, and (3) a proper statement of unintentional delay. Accordingly, the failure to timely reply to the final Office action of November 7, 2006 is accepted as being unintentionally delayed.

An extension of time under 37 CFR 1.136 must be filed prior to the expiration of the maximum extendable period for reply. See In re Application of S, 8 USPQ2d 1630, 1631 (Comm'r Pats. 1988). Since the \$1,020 extension of time fee submitted with the petition on June 7, 2007 was subsequent to the maximum extendable period for reply, this fee is unnecessary and will be credited to petitioner's deposit account in due course.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3218 or to the Office of Petitions Help Desk at (571) 272-3282.

This application is being referred to Technology Center AU 1623 to await the filing of an appeal brief or for such other appropriate reply as may be submitted to continue prosecution of the application.



Frances Hicks

Petitions Examiner
Office of Petitions